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16 **UNITED STATES DISTRICT COURT**

17 **SOUTHERN DISTRICT OF CALIFORNIA**

18 UNITED STATES OF AMERICA,

19 Plaintiff,

20 v.

21 DUNCAN D. HUNTER,

22 Defendant.

Case No. 18CR3677(1)-W

ORDER

23 Upon consideration of defendant Duncan D. Hunter's Motion to Dismiss Indictment for
24 Violation of Speech or Debate Clause of the Constitution (Doc. No. 38) (filed Jun. 24, 2019)
25 and Motion for Disclosure and Production of Grand Jury Materials (Doc. No. 40) (filed Jun.
26 24, 2019), the related legal memoranda in support of and opposition to this motion, the
27 evidence presented including exhibits submitted with the pleadings, the unrebutted allegations
28 in the indictment, the arguments presented at the motion hearing dated July 8, 2019, and the
entire record herein, the Court hereby finds, based on a preponderance of evidence:

1 1. The Hunter family trip to Italy in November 2015 was a personal vacation
2 the primary purpose of which was unrelated to Hunter's work as a member of Congress
3 or candidate for federal office.

4 2. Hunter's primary motive in attempting to schedule the November 2015
5 visit to a base was to generate a pretextual purpose so that he could misrepresent his
6 personal use of campaign funds for the family vacation.

7 3. The proposed November 2015 visit to a base in or around Naples, Italy in
8 conjunction with the Hunter family vacation was, at best, a pre-legislative or fact-
9 finding investigation by an individual member of Congress. On its face, the purpose
10 of the proposed visit is ambiguous, but evidence of the content, purpose, and motives
11 for the proposal demonstrates that it was designed primarily to provide a pretext for
12 the family vacation and not for any legislative purpose. Had the visit occurred, it would
13 have been a non-legislative act.

14 4. Evidence relating to Hunter's attempts to schedule (and then cancel) the
15 visit to a base in or around Naples, Italy, does not relate to any legislative act, and
16 Hunter has failed to demonstrate that the use of that evidence at trial should be
17 prohibited by the Speech or Debate Clause.

18 5. The OCE Report of August 26, 2016, which Hunter played no role in
19 preparing, is not a legislative act of Hunter's and was not related to the process of
20 enacting legislation. Hunter has failed to demonstrate that the use of evidence relating
21 to the OCE Report at trial should be prohibited by the Speech or Debate Clause.

22 6. Hunter's public response to the release of the OCE Report, and the
23 associated discussion with members of Hunter's staff, was designed to mitigate
24 negative effects of the public release of the Report, and was, like a news release,
25 political in nature rather than legislative.

26 7. Evidence relating to Hunter's response to the release of the OCE Report
27 does not relate to any legislative act, and Hunter has failed to demonstrate that the use
28 of that evidence at trial should be prohibited by the Speech or Debate Clause.

1 8. Hunter has failed to demonstrate any particularized need for disclosure of
2 grand jury materials.

3 9. Hunter's claim that the indictment as a whole should be dismissed for
4 violation of his Speech or Debate Clause protections is wholly without merit.

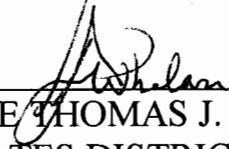
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6 Accordingly, IT IS HEREBY ORDERED that:

7 1. Defendant's Motion to dismiss the indictment for violations of the Speech
8 or Debate Clause is denied.

9 2. Defendant's Motion for disclosure of grand jury materials is denied.

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11 **IT IS SO ORDERED.**

12 DATED: 7/9/19

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16 HONORABLE THOMAS J. WHELAN
17 UNITED STATES DISTRICT JUDGE
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